

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The structure of a second terminal end remotely located from a first terminal end and the gripping member extend at least approximately 270° along the spout contradict the limitation of the gripping member including a circular element as set forth in claim 15.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3, 5, 26, 28, 31, 32, 34, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Murayama (US 4,756,443).

Murayama discloses a fitment comprising a spout (22) having upper and lower ends; a frangible membrane (21) sealing off said spout and having a peripheral edge joined to said spout along a line of weakness (which is formed as the connectors (37) are removed from apertures 28 as a gripping member is pulled); and a gripping member (35, 36) adapted to facilitate removal of said frangible membrane from said spout, said gripping member being semicircular and having first and second terminal ends, said first end (seen in Fig. 1 as comprising 37a) being connected to said frangible membrane adjacent said line of weakness; and said second end (35) being remotely located from said first end and unconnected to said frangible membrane; wherein said frangible membrane and said gripping member are monolithically formed and said gripping member is recessed within said spout. See column 3,

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lines 67 through column 4, line 2 and column 4, lines 45-49 describing the material construction of the components.

4. Claim 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Murayama.

Murayama discloses a fitment having a spout having an upper end and a lower end; a frangible membrane sealing off said spout and having a peripheral edge joined to said spout along a line of weakness; a gripping member adapted to facilitate removal of said frangible membrane from said spout, said gripping member including a circular segment having substantially the same diameter as that of said spout and having a lower edge and a first end, said first end being connected to said frangible membrane adjacent said line of weakness; and a frangible connection interconnecting a portion of said lower edge of said extending gripping member and an adjacent portion of said upper end of said spout.

With respect to claim 18, see figure 4.

Claim Rejections - 35 USC § 103

5. Claim 30 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Murayama.

Murayama appears to disclose gripping ribs in phantom on the gripping member in fig. 1.

Wherein these are not gripping ribs, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply gripping ribs to the second end (35) to make grasping and removal of the gripping member easier.

Allowable Subject Matter

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6. Claims 2, 4, 20-25, 29, 33, and 35 are objected to as being dependent upon a rejected base claim, but appear to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the

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references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

10. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
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- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

/Robin A. Hylton/
Robin A. Hylton
Primary Examiner
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